

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ANTHONY UPSHAW, #217543, )  
Petitioner, ) CASE NO. 2:04-cv-1125-WKW  
v. ) [wo]  
BILLY MITCHEM, *et al.* )  
Respondents. )

**ORDER**

This cause is now before the court on the petitioner's Motion for Certificate of Appealability (Doc. # 46). To obtain a certificate of appealability the prisoner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).<sup>1</sup> For the reasons given in the Recommendation (Doc. # 40) of the Magistrate Judge and the order (Doc. # 42) of the court , the court finds that the petitioner has failed to make that showing.

Accordingly, it is ORDERED that petitioner's motion for a certificate of appealability is DENIED.

DONE this 9th day of August, 2007.

/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The standard for a certificate of appealability is that the petitioner must "make a 'substantial showing of the denial of [a] federal right.'" *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983) (quoting *Stewart v. Beto*, 454 F.2d 268, 270 n.2 (5th Cir. 1971), cert. denied, 406 U.S. 925, (1972)). The Supreme Court further explained that "[i]n requiring a 'question of some substance,' or a 'substantial showing of the denial of [a] federal right', obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.'" *Id.* at 893 n.4 (quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D.Ga. 1980)).